

REMARKS**Status of the Claims**

Upon entry of the amendment above, claims 1, 2, 4-6, 8-10, 13, and 15-36 will be pending, claims 1, 25, 28, 30, 32, 33, and 34 being independent.

Summary of the Office Action

Claim 32 is rejected under 35 USC §112, second paragraph, as being indefinite, as set forth in Section 4 on page 2 of the Office action.

Claims 1, 2, 4-6, 8-10, 13, 15, 18, 19, 23, 28, and 32 are rejected under 35 USC §102(e) as being anticipated by REUSS et al. (U.S. Patent No. 6,250,651, hereinafter "REUSS"), as set forth in Section 6 of the Office action, beginning on page 3.

Claims 16 and 17 remain rejected under 35 USC §103(a) as being unpatentable over REUSS, as set forth in Section 8 of the Office action on page 5.

Claims 20, 24, 25, and 29 are rejected under 35 USC §103(a) as being unpatentable over REUSS in view of BUMGARNER, as set forth in Section 9 of the Office action, on page 6.

Claims 21, 22, 26, 27, 30, and 31 are identified as containing allowable subject matter.

Response to the Office Action**A. Withdrawal of Rejection Under 35 USC §112, Second Paragraph**

In response to the rejection of claim 32 for indefiniteness under 35 USC §112, second paragraph, Applicant has introduced an amendment which is believed to resolve the issue raised in the rejection.

Near the bottom of page 9, above, Applicant has reworded the limitation pertaining to the shapes of the first and second bands of the linkage to specify that they each extend "longitudinally in a direction along a plane" from the first fastener and second fastener, respectively, to the tightening device. Previously, claim 32 had specified that each of the bands

extends straight. The term "straight" had been chosen to differentiate the aforementioned portions of the bands of the invention from the "dogleg" ends of the linkage (see the ends of the linkage 20 in Figs. 1 and 2 of REUSS, at journals/apertures 28), as explained in Applicant's previous response.

Of course, the bands extend straight in a two-dimensional context, although they extend in an arc from one flange of the base to the other.

For the purpose of overcoming the indefiniteness rejection, yet retaining the aforementioned difference, Applicant has amended claim 32 to say that the bands extend "along a plane" between their respective fasteners to the tightening device. By contrast, with the dogleg ends of the REUSS linkage (see Figs. 1 and 2, as well as Figs. 9 and 10), the linkage cannot be said to extend in a direction along a plane from the fasteners to a tightening device. Instead, the linkage of REUSS extends in directions that change from the fasteners toward a tightening device.

In view of the amendment, reconsideration and withdrawal of the rejection is requested.

In spite of the amendment, if the Examiner were to find that a different wording would be preferred for characterizing the direction in which Applicant's first and second bands extend, while maintaining the meaning intended by Applicant, Applicant would welcome any suggestion that would resolve this issue.

B. Withdrawal of Rejections Under 35 USC §§102, 103 Based Upon REUSS

At least for the following reasons, Applicant requests that the rejections based upon REUSS, whether for anticipation or obviousness, be withdrawn.

Independent claims 1, 28, and 32 have been amended. Both claims 1 and 32 have been amended to refer to a "boot removal/insertion position" of the linkage as extending substantially along a plane parallel to the plane of the base.

In the rejection, the Examiner had taken the position (see the paragraph beginning near the bottom of page 7 of the Office action) that claims 1 and 32 are anticipated by REUSS in view of REUSS's description in column 6, lines 50-54, as allegedly providing a teaching that the straps of REUSS can be positioned at "any desired position relative to the baseplate when rotated forwardly to the forward position."

In this regard, a feature of the invention encompassed in claims 1 and 32 is that in which the binding includes a linkage that is movable to a position extending substantially along a plane parallel to the plane of the base.

The above-quoted excerpt from REUSS, cannot be true, *i.e.*, taken *literally*. Clearly, there are positions that cannot possibly be assumed by the front and rear straps of REUSS when they are rotated forwardly. As an example, the rear strap cannot be rotated forwardly 180° from the "use" position shown in Fig. 7, so that the strap would be beneath the snowboard (the base and the front strap would obstruct such movement). The same can be said of the front strap (the board would obstruct such movement, as shown in Fig. 8).

Therefore, because there are positions that cannot possibly be assumed by the straps, one can properly conclude that the statement in column 6, lines 50-54 of REUSS is manifestly *false*. As a consequence, Applicant submits, REUSS's statement cannot be held up, without challenge, for all that the statement is purported to represent.

In this regard, then, the statement on page 8, lines 8-10 of the Office action, in response to arguments made in Applicant's prior response, is mere hyperbole. There the Office action states that column 6, lines 50-54 of REUSS "means that the toe strap can be positioned at ANY desired position ranging from 0° (toe strap folded all the way down parallel to the base plate) to approximately 90°."

Of course, that statement cannot be true inasmuch as the "use" position shown in Fig. 9 itself is about 75° from horizontal; that is, the strap cannot be rotated *forwardly* from the 75° position to a 90° position. In fact, one could logically question why the statement itself *limits* the literal meaning of column 6, lines 50-54 to a 0° to 90° rotation; taken *literally*, that passage of REUSS means that the strap can assume any position rotated from the "use" position forwardly through 360° degrees.

Applicant's point is that the rejection is based upon the disclosure by REUSS of a particular illustrated embodiment, taken together with a statement, relied upon in the Office action as broadening the scope of the illustrated embodiment, but which statement is demonstrably false. Beyond the description by REUSS of that one particular embodiment, therefore, one skilled in the art has been provided no clear additional explanation as to alternative embodiments. Applicant respectfully submits, therefore, that that disclosure is inadequate to support the rejection; it fails to anticipate the rejected claims.

In addition to the foregoing, Applicant has amended claims 1 and 32, as explained above, to call for the first and second bands of the linkage to extend "longitudinally in a direction along a plane" from the first fastener and second fastener, respectively, to the tightening device. By contrast, REUSS's linkage includes "dogleg" ends (see the ends of the linkage 20 in Figs. 1 and 2 of REUSS, at journals/apertures 28).

Finally, Applicant respectfully traverses the rejection of claims 1 and 32 with regard to the statements made in the paragraph in the middle of page 8 of the Office action. There, it is stated that a *top portion* of REUSS's strap in Fig. 7 "lies in a position substantially along a plane parallel to said plane of said base."

First, Fig. 7 shows a "use" position of the strap and claims 1 and 32 now refer to a boot removal/insertion position. In addition, Applicant submits that in Fig. 7 the top portion of the strap of REUSS cannot possibly lie in a plane parallel to the plane of the base inasmuch as the top portion of the strap of REUSS is *curved* (*i.e.*, similar to the reasoning that led to the rejection of claim 32 for indefiniteness).

Applicant also respectfully traverses the rejection of independent claim 28, as well as dependent claim 23 (depending from claim 2) as being anticipated by REUSS.

The rejection relies upon an allegation, regarding claims 23 and 28 (see the first paragraph on page 7 of the Office action), that the "abutment" 40 of REUSS (actually, a fastener) meets the limitations regarding the "abutment" specified in claim 23 and 28 (which encompass the embodiment shown in Applicant's Fig. 6).

The fastener 40 of REUSS does not appear to engage the tightening device in REUSS. By contrast, as amended, claims 23 and 28 call for the abutment to be engageable with the tightening device.

C. Withdrawal of Rejection Under 35 USC §103 Based Upon REUSS in View of BUMGARNER

At least for the following reasons, Applicant requests that the rejection based upon REUSS in view of BUMGARNER be withdrawn. As mentioned above, claims 20, 24, 25, and 29 are rejected under 35 USC §103(a) as being unpatentable over REUSS in view of BUMGARNER, as set forth in Section 9 of the Office action, on page 6. (BUMGARNER is relied upon for the specific shapes of the abutments illustrated, *e.g.*, in Applicant's Figs. 6 and 7.)

Independent claim 25 and dependent claim 20 include a feature of the invention regarding a particular configuration of abutment, encompassing that which is shown in Applicant's Fig. 7 (free end of a first band of a linkage having a tapered shape with lateral teeth). Dependent claims 24 and 29 include a limitation relating to another configuration of abutment, shown in Fig. 6, *i.e.*, a wedge shape having a surface, substantially perpendicular to the outer surface of the first band, facing the tightening device.

Regarding claims 24 and 29, the rejection relies upon the position that "wedge" 24 of BUMGARNER corresponds to the wedge-shaped abutment of Applicant's claims 24 and 29.

The wedge 24 of BUMGARNER is actually part of the connection between the end of the strap and the sides of the base plate, and not the connection between one of the bands of the linkage and the tightening device.

Nevertheless, the rejection relies upon the position that it would have been obvious to have provided the binding of REUSS to include a wedge shape (or tapered shape with lateral teeth discussed below in connection with claims 20 and 25) "to prevent the free end of the first band from passing through the tightening device."

Applicant submits that the asserted motivation for the rejection, quoted above, would not have been obvious to one skilled in the art, particularly if the presence of the fastener 40 of REUSS would prevent the free end of the first band from passing through the tightening device. Therefore, an additional mechanism would not be sought; it would not be needed.

Further, BUMGARNER himself would have provided no motivation for the modification of the REUSS binding, because BUMGARNER uses the wedge abutment for a different purpose, *i.e.*, as part of a quick-release mechanism.

In view of these reasons, Applicant requests that the rejection of claims 24 and 29 be withdrawn.

Regarding the rejection of claims 20 and 25 (having limitations encompassing the embodiment of Applicant's Fig. 7, *i.e.*, lateral teeth (such as elements 73, 74)), the rejection also relies upon BUMGARNER as mentioned above. As with the rejection of claims 24 and 29 regarding the wedge-shaped abutment, the position upon which the rejection relies is that it would have been obvious to have modified the end of a band of REUSS to have lateral teeth, as taught by BUMGARNER.

Again, as with claims 24 and 29, Applicant submits that REUSS is satisfied with fastener 40 preventing separation of the band of the strap and the tightening device and, therefore, one skilled in the art would have no reason to consider modifying the strap to prevent such separation, as maintained in the rejection.

D. New Claims 33-36

In the amendment above, new claims 33-36 have been added.

New independent claim 33 includes the subject matter of allowable claim 30, except for that relating to the linkage lying substantially parallel to a plane of the base (which limitation, also in claim 1, has not served to render claim 1 allowable according to the Examiner).

However, inasmuch as claim 33 otherwise includes the subject matter of allowable claim 30, the allowance of claim 33 is kindly requested.

New independent claim 34 includes the subject matter of independent claim 1, except that the final subparagraph has been replaced. Specifically, in the final subparagraph of claim 34 Applicant specifies that the "at least one linkage of said at least one linkage" is movable forwardly relative to the lateral flanges "unrestricted" by the lateral flanges "from a use position to and in a boot removal/insertion position."

In contrast to this limitation, the lateral flanges of the REUSS binding supports the strap 20. See, e.g., the second sentence of the passage in column 6, lines 50-54 of REUSS. It explains that the straps and/or the baseplate can be configured in any manner to "*hold*" the toe strap 20 at any desired position. This evidences an intention on the part of REUSS that the baseplate is to be constructed in such a way as to hold the strap, whatever the position of the strap.

In new dependent claim 35, Applicant calls for the linkage to be movable forwardly, when the binding is attached to an upper surface of the gliding or rolling apparatus, to engagement therewith in the boot removal/insertion position.

Still further, in new dependent claim 36, Applicant calls for the gliding or rolling apparatus to be a snowboard and that, in the boot removal/insertion position the linkage is engageable with an upper surface of said snowboard.

SUMMARY AND CONCLUSION

The grounds of rejection advanced in the Office action have been addressed and are believed to be overcome. Reconsideration and allowance are respectfully requested in view of the amendment and remarks above.

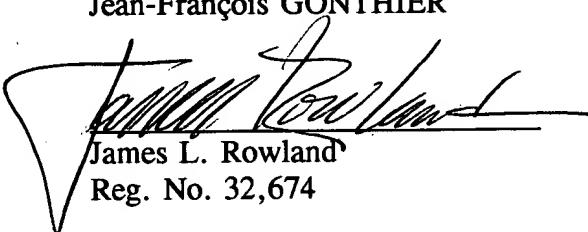
A check is enclosed for payment of a claim fee. No additional fee is believed to be due at this time. However, the Commissioner is authorized to charge any fee required for acceptance of this reply as timely and complete to Deposit Account No. 19-0089.

Further, although no extension of time is believed to be necessary at this time, if it were to be found that an extension of time were necessary to render this reply timely and/or complete,

Applicant requests an extension of time under 37 CFR 1.136(a) in the necessary increment(s) of month(s) to render this reply timely and/or complete and the Commissioner is authorized to charge any necessary extension of time fee under 37 CFR 1.17 to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone or fax number given below.

Respectfully submitted,
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